

AMENDED IN ASSEMBLY MAY 6, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 2448

Introduced by Assembly Member Furutani

February 19, 2010

An act to amend Section 20659 of, and to add and repeal Section 20651.7 of, the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 2448, as amended, Furutani. Public contracts: community college districts: purchases.

(1) Existing law requires the governing board of a community college district, in accordance with certain requirements, to let any contract involving an expenditure of more than \$50,000 for purchases of equipment, materials, supplies, repairs, and services, other than construction services, to the lowest responsible bidder or to reject all bids.

~~If the purchase of supplies and materials by a district exceeds \$50,000, and the district determines that it can expect, among other things, long-term savings through the use of a life-cycle cost methodology, this~~

This bill would authorize the district, if the purchase of supplies and materials exceeds \$50,000 and the district determines that it can expect, among other things, long-term savings through the use of a life-cycle cost methodology, to provide for the purchase of the supplies and materials by contract let in accordance with best value at the lowest-cost acquisition policies adopted by the district's board. The bill would require a district that elects to purchase supplies and materials by contract let in accordance with those policies to submit a specified report

to the Legislative Analyst on or before January 1, 2015, and would require the Legislative Analyst to report to the Legislature on or before April 1, 2015.

This bill would require a district to ensure that all businesses have a fair and equitable opportunity to compete for, and participate in, district contracts awarded pursuant to its provisions and would prohibit discrimination in the award and performance of those contracts.

These provisions would be repealed on January 1, 2016, unless a later enacted statute that is enacted before January 1, 2016, deletes or extends that date.

(2) Existing law requires any change or alteration in certain contracts with a community college district to be in writing, and allows the governing board of the district to authorize the contractor to proceed without securing bids if the cost does not exceed amounts as specified.

This bill would allow the governing board of the district to authorize a contractor to proceed with multiple changes or alterations without securing bids if the cost of all changes or alterations to the original contract does not exceed amounts, as specified.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 20651.7 is added to the Public Contract
- 2 Code, to read:
- 3 20651.7. (a) Notwithstanding Section 20651, when the
- 4 expenditure for the purchase of supplies and materials exceeds
- 5 fifty thousand dollars (\$50,000) and the district determines that it
- 6 can expect long-term savings through the use of a life-cycle cost
- 7 methodology, the use of more sustainable materials and supplies,
- 8 and reduced administrative costs, the district may provide for the
- 9 purchase of the supplies and materials by contract let in accordance
- 10 with best value at the lowest cost acquisition policies adopted by
- 11 the governing board pursuant to this section.
- 12 (b) The best value at the lowest cost acquisition policies adopted
- 13 pursuant to subdivision (a) shall consider all of the following:
- 14 (1) Price and service level proposals that reduce the district's
- 15 overall operating costs.

1 (2) Supplies and materials standards that support the district's
2 strategic supplies and materials acquisition and management
3 program direction.

4 (3) A procedure for protest and resolution.

5 (4) A life cycle of no fewer than three years.

6 (c) For purposes of this section, "best value at the lowest cost
7 acquisition" means a competitive procurement process whereby
8 the award of a contract for supplies and materials may take into
9 consideration any of the following factors:

10 (1) The total cost to the district of its use or consumption of
11 supplies and materials.

12 (2) The operational cost or benefit incurred by the district as a
13 result of a contract award.

14 (3) The *added* value to the district, *as defined in the request for*
15 *proposal*, of vendor-added services.

16 (4) The quality, ~~effectiveness, and innovation~~ *and effectiveness*
17 of supplies, materials, and services.

18 (5) The reliability of delivery or installation schedules.

19 (6) The terms and conditions of product warranties and vendor
20 guarantees.

21 (7) The financial stability of the vendor.

22 (8) The vendor's quality assurance program.

23 (9) The vendor's experience with the provision of supplies,
24 materials, and services.

25 (10) The consistency of the vendor's proposed supplies,
26 materials, and services with the district's overall supplies and
27 materials procurement program.

28 (11) The economic benefits to the ~~general~~ *local* community,
29 including, but not limited to, job creation or retention.

30 (d) The award of the contract shall be made to the responsible
31 proposer whose proposal is determined, in writing by the
32 community college district, to be the best value to the community
33 college district *based on the criteria set forth in the request for*
34 *proposal*.

35 (e) The governing board of the community college district shall
36 issue a written notice of intent to award supporting its contract
37 award and stating in detail the basis of the award. The notice of
38 intent to award and the contract file must be sufficient to satisfy
39 an external audit.

(f) Notwithstanding any other provision of this code, in making a contract award, the governing board of the community college district shall publicly announce its award identifying the bidder to whom the award is made, the winning contractor's price proposal, and the overall combined rating on the request for proposal evaluation factors. The announcement shall also include the agency's ranking in relation to all other responsive proposers and their respective price proposals and a summary of the rationale for the contract award.

(g) The district shall ensure that all businesses have a fair and equitable opportunity to compete for, and participate in, district contracts and shall also ensure that discrimination in the award and performance of contracts does not occur *pursuant to subdivision (e) of Section 12751.3 of the Public Utilities Code*.

(h) If a district elects to purchase supplies and materials by contract, let in accordance with best value acquisition policies adopted by the board pursuant to this section, the district shall submit a report to the Legislative Analyst on or before January 1, 2015. The district shall include in the report a summary of the costs and benefits of best value acquisition compared to traditional low bid procurement practices. The report shall also include statistics showing the number of contracts awarded to small businesses, minority-owned business, and new businesses and the number of years each contract awardee has been in the business. The report shall also include an analysis of the effects of best value procurement practices on these businesses, the nature of any disputes arising from the use of best value procurement practices, and the status of those disputes. On or before April 1, 2015, the Legislative Analyst shall report to the Legislature on the use of "best value at lowest cost acquisition" procurement practices used by community college districts. The report may include recommendations for modifying the provisions of this section and extending the operation of this section beyond January 1, 2016.

(i) This section shall remain in effect only until January 1, 2016, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2016, deletes or extends that date.

~~SEC. 2. Section 20659 of the Public Contract Code is amended to read:~~

~~20659. If any change or alteration of a contract governed by the provisions of this article is ordered by the governing board of~~

1 ~~the community college district, the change or alteration shall be~~
2 ~~specified in writing and the cost agreed upon between the~~
3 ~~governing board and the contractor. The board may authorize the~~
4 ~~contractor to proceed with performance of one or more changes~~
5 ~~or alterations without the formality of securing bids, if the cost of~~
6 ~~all changes or alterations of the contract does not exceed the greater~~
7 ~~of either:~~

8 ~~(a) The amount specified in Section 20651 or 20655, whichever~~
9 ~~is applicable to the original contract.~~

10 ~~(b) Ten percent of the original contract price.~~

11 *SEC. 2. Section 20659 of the Public Contract Code is amended*
12 *to read:*

13 20659. If any change or alteration of a contract governed by
14 the provisions of this article is ordered by the governing board of
15 the community college district, ~~such~~ *the* change or alteration shall
16 be specified in writing and the cost agreed upon between the
17 governing board and the contractor. The board may authorize the
18 contractor to proceed with performance of ~~the change or alteration~~
19 *one or more changes or alterations* without the formality of
20 securing bids, if the cost ~~so agreed upon~~ *of all of the changes or*
21 *alterations* does not exceed the greater of *either of the following*:

22 (a) The amount specified in Section 20651 or 20655, whichever
23 is applicable to the original contract; ~~or.~~

24 (b) Ten percent of the original contract price.